

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

John D. Rigsby,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 2:08-cv-0540
	:	
Michael J. Astrue,	:	JUDGE FROST
Commissioner of Social Security,	:	
	:	
Defendant.	:	

ORDER

This matter is before the Court to consider de novo the plaintiff's objections to a Report and Recommendation of the Magistrate Judge recommending that judgment be entered in favor of the Commissioner. For the following reasons, those objections will be overruled and judgment will be entered for the defendant.

Plaintiff raises a single issue in his objections. He asserts that the Magistrate Judge mischaracterized his assignment of error concerning the vocational expert's testimony by construing it as a claim that the Administrative Law Judge should have disbelieved that testimony. Rather, he claims that the error made at the administrative level was the failure to discuss Social Security Ruling 83-12 concerning claimants who must alternate between sitting and standing.

As both the Report and Recommendation and the Commissioner's response to the plaintiff's objections point out, however, all that SSR 83-12 mandates is the taking of vocational testimony when a sit-stand option is required because the Medical-Vocational Guidelines do not directly address the employability of someone with that particular need. Here, a vocational expert testified at the administrative hearing. Further, although there may have been some initial confusion about how long plaintiff

would actually be off task when he exercised his option to stand, the record supports the conclusion that he would not need (from a medical standpoint) to be off task long enough to interfere with his ability to perform a significant number of otherwise sedentary jobs. The vocational expert specifically said that this was the case, and the Commissioner reasonably relied on his testimony. That is a sufficient basis for this Court to affirm the administrative decision denying benefits.

For these reasons, the plaintiff's objections to the Report and Recommendation of the Magistrate Judge are OVERRULED, and the Report and Recommendation is ADOPTED. The plaintiff's statement of errors is OVERRULED, the decision of the Commissioner is AFFIRMED, and the Clerk is directed to enter judgment in favor of the defendant Commissioner.

GREGORY L. FROST
UNITED STATES DISTRICT JUDGE